# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

SIERRA CLUB,	)					
Plaintiff,	) No. 6:13-cv-00356-JHP					
v.	) Judge James H. Payne					
OKLAHOMA GAS AND ELECTRIC COMPANY,	) ) )					
Defendant.	) )					
	,					
JOINT ST	ATUS REPORT					
Pursuant to Federal Rules of Civil Prod April 30, 2014 at 1:00 p.m. CST. Plaintiff app Wehland and Defendant appearing by counsel	cedure 26(f) a meeting was held by telephone on pearing by counsel Brian Murray and Charles David Bender and Jacquelyn Dill.					
1. Summary of Claims:						
("CAA") by emitting air pollution 1978), which was issued pursuant to Plaintiff requests declaratory, injur	Plaintiff claims that Defendant has violated and is violating the Clean Air Act ("CAA") by emitting air pollution in amounts that violate permit PSD-OK-57 (March 1978), which was issued pursuant to Part C of Subchapter I of the Act. (Compl. ¶ 3.) Plaintiff requests declaratory, injunctive, and monetary relief, including costs and attorney fees. (Compl. at Request for Relief.)					
2. Summary of Defenses:						
claims against Defendant asserted Quality. To the extent any of the cemissions were in compliance with	Defendant asserts that all of the claims are barred by a previous settlement of similar claims against Defendant asserted by Oklahoma Department of Environmental Quality. To the extent any of the claims are not barred, Defendant asserts that its emissions were in compliance with applicable law, including allowances for emissions during periods of startup, shutdown and malfunction.					
3. Stipulations:						
A. Jurisdiction Admitted:	X YesNo					
Explain: See 28 U.S.C. § 1331 Air Act jurisdiction)	(federal question); 42 U.S.C. § 7604(a)(3) (Clean					
B. Venue appropriate:	<u>X</u> Yes No					

Explain: See 42 U.S.C. § 7604(c)

#### C. Facts:

- i. OG&E owns and operates a power plant in Muskogee, Oklahoma, which consists of three steam turbine generating units fired primarily on subbituminous coal.
- ii. In 1978, EPA issued permit PSD-OK-57 to authorize the construction of Unit 6 at the Muskogee plant.
- iii. The permit includes emission limits for opacity and total suspended particulate matter.
- iv. The Complaint alleges that Unit 6 has emitted air pollution in amounts that violate the emission limits in the permit.

D. Law: 42 U.S.C. §§ 7604, 7413 (CAA); OAPCR 1.4.4.

4. Discovery Plan: The parties jointly propose to the Court the following discovery plan:

Discovery will be needed on the following subjects:

- i. What are the alleged TSP and opacity emission exceedances and whether any defenses are available (*e.g.* startup, shutdown and malfunction).
- ii. The appropriate measures that could be ordered by the Court to enjoin and/or remedy any Clean Air Act violations found.

All discovery commenced in time to be completed by a date 14 days prior to the final Pretrial Conference.

Maximum of twenty-five (25) interrogatories by each party to any other party. Responses due thirty (30) days after service.

Maximum of fifty (50) requests for admission on fact issues by each party to any other party. Unlimited requests for admission on evidentiary issues by each party to any other party. Responses due thirty (30) days after service.

Maximum of ten (10) fact depositions by plaintiff and five (5) by defendant.

Each fact deposition limited to a maximum of seven (7) hours unless extended by agreement of parties. Each expert deposition limited to a maximum of fourteen (14) hours unless extended by agreement of parties.

5. All parties consent to trial before Magistrate Judge?					
	_Yes _	X	No		
6. Settlement Plan:					

Settlement Conference requested after the Court's ruling on Defendant's

forthcoming Motion for Summary Judgment.

## 7. Estimated Litigation Costs:

#### A. Plaintiff

(1) Through discovery cuto:	ff	\$ 160,000
(2) Discovery cutoff through	h trial	\$ 60,000
(3) Appeal		\$ 15,000
. ,	Total	\$ 235,000

#### B. Defendant

(1)	Through discovery cutoff	•	\$ 281,000
(2)	Discovery cutoff through	trial	\$ 127,000
(3)	Appeal		\$ 121,000
		Total	\$ 529,000

**GRAND TOTAL (All Parties)** \$\frac{764,000}{}\$

### 8. Actual amount in controversy

Civil penalties up to \$37,500 per day (\$13,687,500 per year) per violation. The total will depend on the number of days of violation proven for each type of violation.

#### 9. Additional Factors:

Defendant plans to file a Motion for Summary Judgment based on its previous settlement of similar claims with Oklahoma Department of Environmental Quality in the near future. The Court's ruling on that motion could have a significant impact on the approach suggested by this Joint Status Report.

#### APPROVED BY:

s/ Jacquelyn Dill

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Dated: April 30, 2014